

EXHIBIT 28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FULL CIRCLE UNITED, LLC,

Plaintiff,

v.

BAY TEK ENTERTAINMENT, INC.,

Defendant.

Civ. Action No. 1:20-cv-03395

**AMENDED RESPONSE TO FIRST
SET OF REQUESTS FOR ADMISSION
OF BAY TEK ENTERTAINMENT, INC.
TO ERIC PAVONY**

BAY TEK ENTERTAINMENT, INC.,

Counterclaim Plaintiff,

v.

FULL CIRCLE UNITED, LLC,

Counterclaim Defendant,

and

ERIC PAVONY,

*Additional Counterclaim
Defendant.*

Counterclaim Defendant Eric Pavony (“Pavony”), through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 26 and 36, amends his responses Request No. 5 and Request No. 6 of the First Set of Requests for Admission by Bay Tek Entertainment, Inc. (“Bay Tek”) to Pavony as follows:

REQUESTS**REQUEST FOR ADMISSION NO. 1:**

Admit that your voice appears in the video excerpts attached as Exhibits B - C to Bay Tek's Counterclaims.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 2:

Admit that you personally appear in the video excerpt attached as Exhibit F to Bay Tek's Counterclaims, titled "State of the Brewnion 2018."

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that you posted and/or personally approved the posting of videos to the Internet in connection with Live Play, Brewskee-Ball and/or NSBL, including the videos whose excerpts are attached as Exhibits B - F to Bay Tek's Counterclaims.

RESPONSE: Pavony objects to this request as vague and confusing and compound. The use of "and/or" makes it difficult to understand the import of this request. Additionally, Pavony has no information as to where or how Bay Tek obtained the videos from which the excerpts were made. As such, Pavony can neither admit nor deny whether he posted or approved the positing of the videos from which the excerpts were made without engaging in speculation. Because Pavony is without sufficient information to truthfully admit or deny Request for Admission No. 3, it is denied.

REQUEST FOR ADMISSION NO. 4:

Admit that you posted and/or personally approved the posting of all content on the websites www.brewskeeball.com and merch.brewskeeball.com.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 5:

Admit that you did not obtain Bay Tek's express consent before making a video or audio Recording of any verbal communications between the parties.

RESPONSE: It is not clear whether Bay Tek is asking Pavony to admit that he never obtained consent for any recordings, or whether it is asking Pavony to admit that he did not obtain consent for all recordings. As worded, the request is denied.

AMENDED RESPONSE: During meet and confer efforts, Bay Tek maintained that the definition of "any" incorporated by reference into the Requests applied, and asked Pavony to supplement his response to this Request with the understanding that the Request seeks "an admission with respect to 'any and all' video or audio recordings". With that understanding, Pavony objects to Request for Admission No. 5 as vague and ambiguous in that it does not define the terms "express consent" or "making". Pavony further objects to the Request in that it seeks information not relevant to any party's claim or defense. Subject to and without waiving the foregoing objections, Pavony responds as follows: Upon reasonable inquiry, the information Pavony knows or can readily obtain is insufficient to enable him to admit or deny this Request, and on that basis, it is denied.

REQUEST FOR ADMISSION NO. 6:

Admit that you are the sole member of Full Circle.

RESPONSE: Admitted.

AMENDED RESPONSE: During meet and confer efforts, Bay Tek maintained that "Full Circle", as defined in the Requests, includes "all predecessors, successors, divisions and affiliates thereof". Bay Tek asked Pavony to supplement his response to this Request to the extent Pavony is not the sole member of Full Circle Bar, LLC and Extra Positive Land, LLC on the basis that Full Circle Bar, LLC and Extra Positive Land, LLC are "affiliated entities" and therefore "affiliates" falling within the meaning of "Full Circle" as defined in the Requests. Accordingly, Pavony amends his response to Request for Admission No. 6 as follows:

Pavony objects to Request for Admission No. 6 as vague and ambiguous to the extent it seeks information relating to "affiliates" of Full Circle United, LLC, and specifically Full Circle Bar, LLC and Extra Positive Land, LLC as "affiliated entities", since the terms "affiliates" and "affiliated entities" are not defined in the Requests. It is unclear whether Full Circle Bar, LLC or Extra Positive Land, LLC are "affiliates" or "affiliated entities" of Full Circle United, LLC, without knowing how Bay Tek defines those terms. Pavony further objects to the Request as impermissibly compound to the extent the Request asks Pavony to admit or deny whether he is sole member of three different entities, matters that should have been separately stated. Subject to and without waiving the foregoing objections, admitted that Pavony is the sole member of Full Circle United, LLC, otherwise denied.

REQUEST FOR ADMISSION NO. 7:

Admit that you did not seek prior written approval from Bay Tek to use any phrase or slogan on the attached Exhibit 1.

RESPONSE: Admitted Pavony did not seek written approval from Bay Tek concerning any of the phrases listed on Exhibit 4. Denied that Pavony used all of the phrases and denied that Pavony was required to obtain Bay Tek's approval or that the phrases use the Mark.

REQUEST FOR ADMISSION NO. 8:

Admit that you approved the use of the phrases and slogans on the attached exhibit.

RESPONSE: Denied.

Dated: March 5, 2021

Respectfully Submitted,

/s/ Christina Casadonte-Apostolou

Paul Thanasides
paul@mcintyrefirm.com
clservice@mcintyrefirm.com
Christina Casadonte-Apostolou
christina@mcintyrefirm.com
complexlit@mcintyrefirm.com
McIntyre Thanasides Bringgold Elliott
Grimaldi Guito & Matthews, P.A.
500 E. Kennedy Blvd., Suite 200
Tampa, FL 33602
Telephone: 813.223.0000
Facsimile: 813.225.1221

and

Jon Fetterolf
jfetterolf@zuckerman.com
Shawn Naunton
jfetterolf@zuckerman.com
Zuckerman Spaeder LLP
485 Madison Ave., 10th Floor
New York, NY 10022
Telephone: 212.704.9600
Facsimile 212.704.4256

Ezra Marcus
emarcus@zuckerman.com
Zuckerman Spaeder LLP
1800 M Street, N.W., Suite 1000
Washington, DC 20036
Telephone: 202.778.1800
Facsimile: 202.822.8106
***Counsel for Plaintiff/Counterclaim
Defendant Full Circle United, LLC and
Counterclaim Defendant Eric Pavony***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2021 a true and correct copy of the foregoing was served by email to the following:

Christine Lepera
ctl@msk.com
Jeffrey Movit
jmm@msk.com
Leo M. Lichtman
lml@msk.com
Mitchell Silberberg & Knupp LLP
437 Madison Ave., 25th Floor
New York, NY 10022
Telephone: 212.509.3900
Facsimile: 212.509.7239
***Counsel for Defendant/Counterclaim
Plaintiff Bay Tek Entertainment, Inc.***

/s/ Christina Casadonte-Apostolou
Attorney